

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

April 24, 1997

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re FHP, Inc.

Serial No. 74/414,040

Leonard Tachner, Esq. for applicant.

Sue Carruthers, Trademark Examining Attorney, Law Office 108,
(David Shallant, Managing Attorney).

Before Sams, Quinn and Hohein, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

An application has been filed by FHP, Inc. to register the designation "SENIOR PLAN" as a service mark for "health services, namely, medical, dental, optometric and psychiatric services made available primarily at medical centers".¹

Registration has been repeatedly refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §2(e)(1), on the basis

¹ Ser. No. 74/414,040, filed on July 19, 1993, which alleges a date of first use anywhere of September 1983 and a date of first use in commerce of February 1986.

that the designation "SENIOR PLAN" is a generic term for applicant's services.

Applicant has appealed.² Briefs have been filed,³ but an oral hearing was not requested. We affirm the refusal to register.

² Although the refusal to register has not been stated by the Examining Attorney to be final, Trademark Rule 2.141 provides, in relevant part, that: "A second refusal on the same grounds may be considered as final by the applicant for purpose of appeal." Thus, unlike an earlier appeal filed by applicant, the present appeal is properly before us and is not premature.

³ The Examining Attorney, while initially refusing registration under Section 2(e)(1) solely on the ground that the designation "SENIOR PLAN" is merely descriptive of applicant's services, also indicated, however, that:

The proposed mark appears to be generic as applied to the services and, therefore, incapable of identifying the applicant's services and distinguishing them from those of others. *In re Management Recruiters International, Inc.*, 1 USPQ2d 1079 (TTAB 1986). Under these circumstances, the examining attorney cannot recommend an amendment to proceed under Trademark Act Section 2(f), 15 U.S.C. Section 2(f), or an amendment to the Supplemental Register.

Applicant, in response, argued that the designation "SENIOR PLAN" is not generic for its services and further stated that "[r]efusal for alleged descriptiveness is believed to be overcome by a showing of secondary meaning," which consisted of representative samples of its advertising and an indication that promotional expenditures during the period from 1983 through 1994 have exceeded \$54 million. The Examining Attorney, in reply, adhered to her position that the designation sought to be registered is generic and noted, furthermore, that even if such were not the case, applicant's showing of acquired distinctiveness under Section 2(f) was insufficient to overcome the previously raised mere descriptiveness refusal. However, with respect to the sufficiency of applicant's claim of secondary meaning, the Examining Attorney has indicated in her brief that:

In this statement, the examining attorney withdraws her finding that applicant's evidence of distinctiveness is insufficient to establish a §2(f) claim. However, while the evidence would be acceptable to show acquired distinctiveness of a merely descriptive mark, the

The Examining Attorney, in support of her position, has made of record various excerpts from the three searches she conducted of the "NEXIS" database. The information extracted therefrom, of which the following newspaper, magazine and journal excerpts are representative, plainly demonstrates use of the designation "SENIOR PLAN" to signify a category, class or plan of healthcare services which are directed solely to persons who are elderly, aged or senior citizens.

Specifically, with her first Office action, the Examining Attorney submitted excerpts from 10 newspaper, magazine and journal articles, including the examples set forth below,⁴ to show that "'[s]enior plan' refers to a type of health insurance plan made available to senior citizens" and that "[t]he designation is used frequently throughout the health insurance industry" (**emphasis added**):

The CareAmerica 65 Plus plan, like other
so-called **senior plans**, offers Medicare

examining attorney maintains her determination that
"SENIOR PLAN" is generic and, therefore, unregistrable.

Thus, only the issue of genericness is before us on this appeal.

⁴ We observe, however, that there is no indication of the date of the search, the library and file(s) searched, or the search strategy employed. Moreover, while the search results made of record also included an excerpt from a wire-service news story, we have given essentially no consideration thereto inasmuch as excerpts from proprietary news services are of little, if any, probative value with respect to genericness and other descriptiveness issues. This is because, unlike newspaper, magazine and journal articles, wire-service stories are not presumed to have circulated among the general public so as to have had any influence on purchasers' attitudes towards the particular term or designation in question. See, e.g., *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1555 (TTAB 1987) at n. 6 and *In re Men's Int'l Professional Tennis Council*, 1 USPQ2d 1917, 1918 (TTAB 1987) at n. 5.

recipients the basic coverage approved by the government, but adds benefits such as prescription services, eye care and preventive programs at no extra cost. -- L.A. Times, August 17, 1993, Business, §D, at 8, col. 1;

Another major Medicare contractor, Fountain Valley, Calif.-based FHP ..., recently introduced its **senior plan** to eligible Medicare beneficiaries in Santa Fe,

N.M. FHP serves more than 260,000 Medicare enrollees in five states and Guam. -- Modern Healthcare, January 4, 1993, at 31;

The **senior plan**, which Blue Cross offered in Wichita for five years, was dropped because the funding came from Medicare, which paid a predetermined capitation fee per month per member to cover anticipated medical expenses Wichita Business Journal, June 12, 1992, §1, at 1;

Membership in the company's commercial division, which offers health services through employers, grew 7.8% in California in the 12 months ended Sept. 30 And **senior-plan** membership, which is a Medicare substitution program, grew 18% in the same period. -- L.A. Times, November 19, 1991, Business, §D, at 7, col. 2 (article headlined in part: "FHP TO CUT ITS CORPORATE STAFF AS GROWTH SLOWS");

According to the retirees' association, Bay State announced "without warning" that municipal retirees over age 65 would have to enroll in two Medicare-approved **senior plans** if they wanted to continue receiving Bay State coverage. The two **senior plans** currently have about 11,000 members total.

Those not eligible for Medicare would have to pay between \$202 to \$222 per month for Medicare Part A coverage, the association estimated. On top of that would be the \$5-t-\$65 premium for enrolling in the Bay State **senior plan**, as well as another \$29.90 for Medicare Part B (physician coverage). --

Boston Business Journal, June 3, 1991, §1, at 3; and

Michael Reese Health Plan has sharply curtailed its coverage of prescription drugs used outside the hospital by the 17,000 elderly who are members of its "**senior plan**" for Medicare beneficiaries, and a spokesman for the federal Medicare program criticized as "wrong" the way the Chicago-based plan explained the change. -- Chicago Tribune, January 10, 1991, Business, at 1.

In light of the evidence furnished by applicant in its response to the initial Office action, the Examining Attorney with her second Office action submitted 11 "additional excerpts from the LEXIS-NEXIS database, some of which show the words 'senior plan' used prior to the applicant's first use in commerce."⁵ Such excerpts included the following examples (**emphasis added**):

More than 70 percent of Fallon Clinic's patients and 40 percent of Saint Vincent patients are members of the Fallon Community Health Plan, a group-model HMO providing care to more than 120,000 enrollees in central Massachusetts. Fallon offers both a regular plan and a **senior plan**. The **senior plan** is a Medicare risk contract initiated as one of the first federal demonstration projects. -- Physician Executive, July 1991, at 27;

Seniors are complaining in droves about rising costs of the 1989 premiums for Health Maintenance Organizations (HMOs). Not so many years ago, **senior plans** were hailed as the answer to keeping down health care costs by offering preventive maintenance as well as

⁵ The excerpts, along with two additional articles from newswire services, were discovered during a search conducted on August 9, 1994 in the "ARCNEWS" file of the "NEWS" library using the search strategy "'SENIOR PLAN' W/25 (HEALTH OR MEDICAL) AND NOT FHP".

sick care in exchange for modest premiums and Medicare reimbursement.

Last November, five Massachusetts HMOs announced they could no longer afford to risk contracts with Medicare this year Now, the other HMOs with **senior plans** have announced various increases in quarterly premiums. -- Boston Globe, January 25, 1989, Living, at 42 (article headlined "Rising HMO costs trouble many elders");

This year, the health plan saw steady growth in enrollment with the addition of several new products, including an individual health plan offering discounted rates for children; a preferred **senior plan** allowing qualified senior citizens to order prescription drugs by mail; and Senior Healthtrac, a risk assessment and management program for senior employee groups and

individuals designed to lower medical costs. -- San Francisco Business Times, December 26, 1988, §1, at 16;

Senior Health Plan's **senior plan** provides HMO health coverage as well as transportation, homemaking services, and meals to Medicare beneficiaries -- Minneapolis-St. Paul CityBusiness, January 28, 1987, §1, at 8; and

[An] experiment that shows promise in cutting costs and improving care is in its third year in Worcester, Mass. A health maintenance organization there, Fallon Clinic, has been authorized by the Health Care Financing Administration, which runs Medicare, to enroll 6,000 volunteer Medicare patients on a prepaid basis.

The **Senior Plan**, as it is called, gets \$140 a month for each patient, or about 95 percent of the average Medicare cost -- N.Y. Times, April 1, 1982, §A, at 1, col. 2.

Finally, with her third Office action, the Examining Attorney included further "excerpts from the LEXIS-NEXIS data base (29 stories) which show the words 'senior plan' used

extensively in conjunction with healthcare providers other than the applicant."⁶ According to the Examining Attorney, such evidence "establishes that 'senior plan' is commonly used wording to refer to health plans directed to senior citizens" and, thus, "it cannot be appropriated by one entity." A representative sample of such excerpts is set forth below (**emphasis added**):

[Fallon Healthcare] says that its goal to be the best place to come for care is shown through its wellness and prevention

programs and its patient-driven focus. Its **senior plan** is a national model, serving as the first risk contract with Medicare. -- Boston Herald, May 15, 1995, Job, at 41;

Tufts also plans to expand its offerings to senior citizens. Last summer the company introduced Secure Horizons, a Medicare replacement plan. Until now, the **senior plan** has been sold just to individuals. -- Boston Globe, May 2, 1995, Economy, at 35;

So far, four insurers are offering Medicare **senior plans**. They include Harvard Community Health Plan's "First Seniority," Tufts Health Plan's "Secure Horizons," Pilgrim Health Care's "Prime 65" and U.S. Health Care's Medicare Plan. -- Boston Herald, January 22, 1995, News, at 9 (article headlined "A golden age for HMOs; Seniors flock to new low-cost care");

As health maintenance organizations scramble to sign up the elderly for their

⁶ Of the excerpts obtained by the Examining Attorney from her May 17, 1995 search of the "ALLNWS" file of the "NEWS" library using the search strategy "'SENIOR PLAN' W/30 (HEALTH OR MEDIC! OR INSURANCE) AND NOT FHP," only a few are duplicative of those which she previously had made of record and just one is from a newswire service.

senior plans, the American Assn. of Retired Persons offers this advice to consumers. -- L.A. Times, February 27, 1994, Business, §D, at 3, col. 2;

Halvorson said the increases were necessary because the HMO lost money last year on its **senior plans**.

....
He said Group Health's board of directors has appointed a committee, including representatives of enrollees in its **senior plans**, to define low income for the plan. -- Minneapolis Star Tribune, February 5, 1994, News, at 1B (article headlined in part "Group Health offers low-cost plan for seniors");

As alternatives, individual members will be offered enrollment in Medigap plans or (managed care) **senior plans**; group members will be offered a new product, Bay State for Seniors. -- National Underwriter (Life & Health/Financial Services Edition), November 9, 1992, Health Briefs, at 46; and

In the first four months of this year, Blue Cross expected a \$434,000 loss for its

senior plan -- Rochester Business Journal, May 9, 1988, §1, at 1 (article headlined "Local HMOs Post Big Losses for 1987").

The Examining Attorney contends in her brief that the various excerpts from articles retrieved from her searches of the "NEXIS" database "show that the words 'senior plan' are commonly used to identify a healthcare plan offered to senior citizens." Such excerpts, the Examining Attorney maintains, "establish unequivocally that 'senior plan' is used generically to refer to health plans for older persons." In particular, the Examining Attorney notes with respect to applicant's health services that:

Applicant is a health maintenance organization (HMO) which offers a health care option to Medicare recipients called "Senior Plan." "Senior Plan" is simply a health plan directed specifically to senior citizens, or, as applicant states in its brief, "a special form of health coverage for the elderly." A provider of health plans to individuals at all stages of life (as shown in its "Encore!" magazine, submitted as part of the evidence in support of distinctiveness) applicant offers its "Senior Plan" exclusively to individuals who are eligible for Medicare.

Thus, "Senior Plan" identifies exactly what it is--a plan for senior citizens. When viewed in conjunction with the recitation of services and the specimens, it is obvious that it is a plan offered to a specific group of persons within applicant's larger role as a health care provider. "Senior Plan" is simply one category of service which applicant provides.

Applicant, on the other hand, asserts in its brief that "the evidence is at best unclear as to the alleged genericness" of the designation "SENIOR PLAN" when consideration is also given to the 39 excerpts which it has made of record from its search of the "NEXIS" database.⁷ Nevertheless, applicant further argues that such evidence, of which an illustrative sample of newspaper and magazine articles (spanning the period from January 1994 to May 1992) is reproduced below, "shows that the public perceives

⁷ We notice, however, that like the initial search performed by the Examining Attorney, applicant provided no indication of the date of the search, the library and file(s) searched, or the search strategy employed. Moreover, 20 of the excerpts are stories from proprietary news services, such as Business Wire, United Press International, PR Newswire and Reuters, which as mentioned previously are essentially entitled to no consideration since they have little, if any, probative value with respect to the issue of genericness.

the mark as designating Applicant as the source of the relevant services" (**emphasis added**):

By adding TakeCare's commercial HMO enrollment to **FHP's** total enrollment of 851,000, the merger also will enable the new company to market its **Senior Plan** to even more Medicare beneficiaries -- Business Insurance, January 17, 1994, at 1;

FHP's acquisition was strategically designed to add significantly to its successful **Senior Plan** program for Medicare recipients, according to company officials. -- L.A. Times, January 16, 1994, Business, §D, at 1, col. 4;

FHP is filing for regulatory approvals for its **Senior Plan** Medicare-risk program in San Francisco, Alameda, -- San Francisco Business Times, October 22, 1993, §1, at 1;

Banking on its successful **Senior Plan** Medicare program, **FHP** has been looking to share its expertise with other HMOs in areas where it is not cost effective

[A] deal, arranged 18 months ago, helped Greater Atlantic Health Services Inc. in Philadelphia establish a **senior plan**.

Gaining popularity quickly, **senior plans** allow elderly Medicare recipients to enroll in managed care programs under contract with the federal government. -- L.A. Times, October 13, 1993, Business, §D, at 7, col. 1;

Experts acknowledge at least 11 Southern California **senior plans**, thought to be pouring \$25-35 million into the local ad market, including: Secure Horizons, ... **FHP Senior Plan**, ... Aetna Senior Choice, -- ADWEEK, June 21, 1993 (article headlined "Senior Healthcare Plans Get Word Out");

Fear of future hospital bills helped drive retired advertising copywriter Dorothy Gambrill, 72, to join the **FHP Inc. Senior Plan** in Albuquerque, N.M., in 1990. **Senior**

Plan, a program for Medicare-eligible members of **FHP's** health maintenance organization, has already picked up a \$32,000 [hospital bill]. -- U.S. News & World Report, January 18, 1993, at 80;

Another major Medicare contractor, Fountain Valley, Calif.-based **FHP**, recently introduced its **senior plan** to eligible Medicare beneficiaries in Santa Fe, N.M. -- Modern Healthcare, January 4, 1993, at 31; and

He said the company is trying to contain costs through means including changing the benefits package for **Senior Plan** members. -- L.A. Times, May 8, 1992, Business, §D, at 5, col. 2 (article headlined in part "**FHP** TO OFFER A PLAN FOR THE SELF-EMPLOYED").

Applicant additionally notes in its brief that, among other things, it "is a large well-known health maintenance organization (HMO) doing business primarily in the western United States"; that it "first introduced a special form of health coverage for the elderly under the service mark 'SENIOR PLAN'" in 1983; that "[a] massive amount of advertising over the past eleven years has resulted in an enrollment of over a quarter million elderly citizens today"; that the representative sample of record of such advertising "illustrates the extent to which Applicant has made its SENIOR PLAN service mark known to the general public including its customers and prospective customers"; and that its promotional expenditures have exceeded \$54 million. In view thereof, and in light of the excerpts it has furnished from the "NEXIS" database, applicant insists that the Examining Attorney has simply failed to sustain her burden of showing by clear evidence that, as used in connection with health

services, the primary significance of the designation "SENIOR PLAN" to the purchasing public is that of a generic term.

In this respect, applicant argues that the issue in this appeal is "strikingly similar" to the genericness issue in *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987), in which the Court, noting the "voluminous evidence of usage in financial publications of the term" pioneered by the appellant, found that "[t]he mixture of usages unearthed by the NEXIS computerized retrieval service does not show, by clear evidence, that the financial community views and uses the term CASH MANAGEMENT ACCOUNT as a generic, common descriptive term for the brokerage services to which Merrill Lynch first applied the term" (footnote omitted). Specifically, in reversing the Board's finding of genericness, the Court observed that:

The evidence before the Board showed recognition in a substantial number of publications that the source of the CASH MANAGEMENT ACCOUNT was the appellant. This evidence does not clearly place appellant's mark in the category of a generic or common descriptive term. As Judge Rich explained in *In re Abcor Development Corp.*, 588 F.2d 811, 816, 200 USPQ 215, 219 (CCPA 1978) (Rich, J., concurring) (emphasis in original), a term that immediately and unequivocally describes the purpose and function of appellant's goods is a name for those goods,

for "[t]hat is what *names* do. They tell you what the thing *is*." The term CASH MANAGEMENT ACCOUNT was not shown to meet this standard. Accordingly, because the Patent and Trademark Office failed to sustain its burden of showing that appellant's proposed trademark is generic, we hold that the factual

determination by the Board, finding that the term CASH MANAGEMENT ACCOUNT as used by appellant is generic, is clearly erroneous.

4 USPQ2d at 1143-44. Applicant likewise urges that because "SENIOR PLAN does not immediately and unequivocally [sic] describe the purpose and function of the services recited in the present application," such designation is not generic.

It is well settled that in the case of a generic designation, the burden is on the Patent and Trademark Office to show the genericness of the designation by "clear evidence" thereof. See, e.g., In re Merrill Lynch, Pierce, Fenner & Smith, Inc., supra at 1143. See also In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987). As to the standard for evaluating genericness, the Board in In re Leatherman Tool Group Inc., 32 USPQ2d 1443, 1449 (TTAB 1994) stated that:

The test for determining whether a designation is generic, as applied to the goods [or services] set forth in an application or registration, turns upon how the term is perceived by the relevant public. See Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551, 1552-53 (Fed. Cir. 1991) and cases cited therein at 1553. Such perception is the primary consideration in a determination of genericness. See Loglan Institute Inc. v. Logical Language Group Inc., 962 F.2d 1038, 22 USPQ2d 1531, 1532 (Fed. Cir. 1992). As Section 14(3) of the Trademark Act, 15 U.S.C. §1064(3), makes clear, "[a] ... mark shall not be deemed to be the generic name of goods [or services] solely because such mark is also used as a name to identify a unique product [or

service]"; instead, "[t]he primary significance of the ... mark to the relevant public rather than purchaser motivation shall be the test for determining whether the ... mark [is or] has become the generic name of

the goods [or service] on or in connection with which it has been used." Consequently, if the designation sought to be registered is understood by the relevant public primarily to refer to the class or genus of goods [or services] at issue, the term is generic. See *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, [728 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)] Evidence of the relevant public's understanding of a term may be obtained from any competent source, including newspapers, magazines, dictionaries, catalogs and other publications. See *In re Northland Aluminum Products, Inc.*, 777 F.2d 1566, 227 USPQ 961, 963 (Fed. Cir. 1985).

Upon careful consideration of the entire record, we agree with the Examining Attorney that the designation "SENIOR PLAN" is a generic term for health services, including those which consist of medical, dental, optometric and psychiatric services made available primarily at medical centers. Contrary to applicant's contention that only a small minority of the "NEXIS" excerpts of record are even "arguably generic" usages of the designation "SENIOR PLAN," we find that a large majority of the probative "NEXIS" excerpts clearly demonstrate that such designation primarily signifies, to those in the health services field and the customers thereof, any health services plan or program directed to seniors or the elderly. In fact, it is especially notable that several of the articles in the excerpts furnished by applicant not only refer to its health services for the elderly by the designation "Senior Plan," but also mention other healthcare providers which commonly offer "senior plans" that are likewise directed to needs of senior citizens. On the whole, it is plain from the pertinent evidentiary record that, to

most members of the relevant public, including healthcare industry personnel and the elderly, the designation "SENIOR PLAN" generically names applicant's services, and the like services of others in the same field, in the sense that it tells persons what those services are. In essence, by immediately and unequivocally describing the purpose and function of the health services applicant and others provide to senior citizens through managed care plans involving various medical, dental, optometric and psychiatric services, the designation "SENIOR PLAN" names the category or class by which such services are commonly known.

In reaching this decision, we have not ignored or disregarded the advertising and promotional evidence furnished by applicant. Such evidence, while submitted in connection with applicant's claim of acquired distinctiveness, may nevertheless be said to have a bearing upon whether the designation "SENIOR PLAN" is generic for health services of the kinds rendered to the elderly by applicant and others. While applicant's advertising and promotional evidence indicates that, particularly among enrollees in and prospective subscribers to applicant's plan, the designation "SENIOR PLAN" has acquired a de facto secondary meaning,⁸ such evidence is simply outweighed by the fact that a

⁸ However, as pointed out in *J. Kohnstam, Ltd. v. Louis Marx & Co., Inc.*, 280 F.2d 437, 126 USPQ 362 (CCPA 1960), where there is only one source for a particular product or service over a period of time, the public might come to associate that source with the name by which product or service is called, but such circumstance cannot take a generic name for the product or service out of the public domain and give the temporary exclusive user thereof exclusive trademark or service mark rights therein no matter how much money or effort user puts into the promotion of the product or service.

large portion of the probative "NEXIS" excerpts, including several which refer to applicant and its services by name in addition to mentioning health plans offered by third parties, clearly and unambiguously demonstrate generic rather than proprietary usages of such designation. This case is thus unlike the situation in *Merrill Lynch*, supra at 1143-44, which presented a mixture of uses which our principal reviewing court found to be so indeterminate as to be insufficient proof of genericness. Instead, the record herein satisfactorily establishes that, to the relevant public, the designation "SENIOR PLAN" primarily means or signifies a category or class of health services, namely, any plan or program of health services aimed at seniors.⁹

As a final consideration, we judicially notice that The Random House Dictionary of the English Language (2d ed. 1987) at 1744 defines the word "senior" as a adjective meaning, inter alia, "of, for, or pertaining to a senior citizen or senior citizens as a group: *senior discounts on local bus fares*" and lists the term "senior citizen" as connoting "an elderly or aged person, esp. one who is retired or whose principal source of support is a pension or Social Security benefits."¹⁰ The same

⁹ The fact that applicant assertedly may have been the first user of such designation does not, as the Examining Attorney notes in her brief, justify the registration thereof if such designation projects a generic significance. See, e.g., *CES Publishing Corp. v. St. Regis Publications, Inc.*, 188 USPQ 612, 615 (2d Cir. 1975) and *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983).

¹⁰ The Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ

dictionary at 1480 defines the word "plan" as a noun which means, among other things, "a formal program for specified benefits, needs, etc.: a *pension plan*." It consequently is plain that the relevant public, in light of these definitions, would understand that when joined to form the designation "SENIOR PLAN," the individual words have a meaning identical to the meaning which ordinary usage would ascribe to those terms in combination. See, e.g., *In re Gould Paper Corp.*, supra at 1112 ["SCREENWIPE" for a "premoistened, antistatic cloth for cleaning computer and television screens" incapable of being registered]. There is simply nothing in the combination of the words forming the designation "SENIOR PLAN" which indicates that the combined terms would have any meaning other than, as shown by the large majority of the "NEXIS" excerpts, generically signifying any kind of health services plan for seniors, including the medical, dental, optometric and psychiatric services rendered by applicant to the senior citizen membership of its managed care plan.

In summary, because the record shows that, to the relevant public, the designation "SENIOR PLAN" primarily signifies only a class or category of health services for seniors which applicant and others in the managed healthcare field provide, the Patent and Trademark Office has met its burden of establishing by clear evidence that such designation is generic and therefore is not registrable.

594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Ser. No. 74/414,040

Decision: The refusal under Section 2(e)(1) on the basis of genericness is affirmed.

J. D. Sams

T. J. Quinn

G. D. Hohein
Administrative Trademark Judges,
Trademark Trial and Appeal Board